

SETTLEMENT AGREEMENT

Effective September 28, 2011, COPIC Insurance Company ("COPIC"), a Colorado corporation, the Colorado Division of Insurance (the "Division"), and the Colorado Commissioner of Insurance (the "Commissioner") (COPIC, the Division, and the Commissioner shall collectively be referred to as the "parties") hereby enter into this Settlement Agreement to resolve the issues raised in Division of Insurance Final Agency Orders O-11-002, O-11-012 and O-11-028 ("FAOs") and COPIC's related appeals of the FAOs, *COPIC Insurance Co. v. State of Colorado, Dept. of Regulatory Agencies, Div. of Insurance*, Case No. 2010cv6135, District Court for the City and County of Denver and *COPIC Insurance Co. v State of Colorado Dept. of Regulatory Agencies, Div. of Insurance*, Case No. 10CA1680, Colorado Court of Appeals (the "Appeals").

RECITALS

WHEREAS COPIC has provided long-term care insurance as a benefit to its employees and as a benefit to COPIC's individual professional liability policyholders since 1997;

WHEREAS COPIC has provided this long-term care insurance under a group policy, specifically the LTC-GMP-COPIC policy, and has continuously done so since the inception of COPIC's long-term care insurance plan in 1997 (the "LTC Group Policy");

WHEREAS COPIC believed and understood that in 1997 the Division approved COPIC's request to offer long-term care insurance as a group and under a group master policy;

WHEREAS from 1997 through 2009 COPIC made form and limited rate filings with the Division for COPIC's LTC Group Policy;

WHEREAS from approximately November 2009 to July 2010, the Division conducted a limited market conduct examination of COPIC's professional liability and long-term care business for the time period from January 1, 2008 through December 31, 2008 and in conjunction with this examination, the Division staff and the MCE examiners questioned whether COPIC's physician professional liability insureds qualified as a "group" for purposes of issuing group long-term care insurance under Colorado insurance law;

WHEREAS on July 2, 2010, and in conjunction with the Final Market Conduct Examination Report the Division issued Final Agency Order O-11-002, amended on August 3, 2010, by Final Agency Order O-11-012, and the Final Market Conduct Examination Report and Final Agency Orders O-11-002 and O-11-012 include findings of fact and conclusions of law with respect to, inter alia, COPIC's administration of its long-term care insurance program;

WHEREAS on June 17, 2010, COPIC filed a Request for Suspension or Modification Under Section 26 of Colorado Insurance Regulation 4-4-1 (3 Colo. Code Reg. § 704-4:4-1(26)) Concerning Requirements for Long-Term Care Insurance seeking to resolve specific concerns regarding the administration of COPIC's long-term care insurance benefit (the "Section 26 Request") and on July 23, 2010, COPIC submitted a Confirmation of Group Status With Respect to Long-Term Care Insurance Under C.R.S. § 10-19-103(4)(d), which sought the Division's confirmation that the Division considered COPIC's professional liability insureds to be an appropriate group for purposes of long-term care insurance (the "Group Status Request");

WHEREAS on July 26, 2010, COPIC and the Division entered into an Agreement Between the Colorado Division of Insurance and COPIC Insurance Company Regarding COPIC's Request for Exemption Under Section 26 of Division of Insurance Regulation 4-4-1 And Request for Determination of Law Under Section 10-19-103(4), C.R.S. ("Agreement") for a

limited administrative hearing ("Limited Hearing"), which Limited Hearing was held on July 26, 2010;

WHEREAS on July 27, 2010, the Division issued Final Agency Order No. O-11-028 holding that COPIC's individual professional liability insureds do not meet the definition of a "group" as defined under § 10-19-103(4)(d), C.R.S. and therefore determined COPIC's Section 26 Request was moot, as such exemptions would only be applicable if COPIC were granted "group" status under § 10-19-103(4), C.R.S. The Commissioner thus deemed COPIC's Section 26 Request denied;

WHEREAS to the extent that COPIC offers long-term care insurance to its employees, COPIC does qualify as "group" pursuant to C.R.S. § 10-19-103(4)(a) for its employee insureds;

WHEREAS COPIC has filed a Complaint for Review and an appeal of both the Final Report and Final Agency Orders O-11-002/O-11-012 (*COPIC Insurance Co. v. State of Colorado, Dept. of Regulatory Agencies, Div. of Insurance*, Case No. 2010cv6135, District Court for the City and County of Denver) and Final Agency Order No. O-11-028 (*COPIC Insurance Co. v State of Colorado. Dept. of Regulatory Agencies, Div. of Insurance*, Case No. 10CA1680, Colorado Court of Appeals) (collectively, the "Appeals");

WHEREAS COPIC and the Division have entered into Stipulations staying the effective dates of Final Agency Order Nos. O-11-002, O-11-012, O-11-028 pending the outcome of the respective Appeals;

WHEREAS both COPIC and the Division desire to minimize the Final Agency Orders' effect on any insureds who were covered by the LTC-GMP-COPIC policy prior to issuance of the Final Agency Order No. O-11-028;

WHEREAS with an intent to resolve and settle the Appeals concerning the Division's Final Agency Orders, both the Division and COPIC entered into a Memorandum of Understanding Regarding Colorado Division of Insurance Final Agency Orders O-11-002, O-11-012, And O-11-028 ("MOU") executed on June 6 and June 7, 2011 respectively;

WHEREAS the MOU provides for a possible resolution of all issues raised by the Market Conduct Examination ("MCE") and in the Appeals;

WHEREAS consistent with the MOU and to resolve the pending Appeals, the parties contemporaneously with this Settlement Agreement are also entering into a Stipulation;

WHEREAS the MOU, the Stipulation, and this Settlement Agreement reflect the parties' intention and agreement that COPIC may continue to offer renewal of LTC certificates to those individual physician insureds who are covered under COPIC's LTC Group Policy as of December 31, 2011 ("Grandfathered Physician Group"), with such renewal and coverage continuing under LTC-GMP-COPIC-112;

WHEREAS the Stipulation is intended primarily to address and document the parties' agreement concerning the future administration of the Grandfathered Physician Group and the COPIC employee group; and

WHEREAS this Settlement Agreement is intended primarily to address the historical administration of the COPIC LTC program and those issues subject to Final Agency Orders O-11-002, O-11-012, and O-11-028 and the pending Appeals;

NOW THEREFORE, in consideration of the above recitals and the mutual promises and covenants provided herein, the sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Administration of COPIC's Long Term Care Insurance Program:

(a) **Separation of Professional Liability and Long Term Care Insurance**

Coverages and Rates. Pursuant to the Stipulation, which is incorporated herein by reference, the parties have agreed that COPIC will separate its long term care insurance from its professional liability insurance effective January 1, 2012 and that the physician insureds, who are insured as of December 31, 2011, may remain a group until the natural termination of the group as defined in the MOU and Stipulation. After December 31, 2011, COPIC will not offer long term care coverage to any additional physicians unless a physician becomes eligible for COPIC long term care insurance by becoming an employee of COPIC. The details of the administration of the Grandfathered Physician Group are explained and agreed in the Stipulation.

(b) **Amendment of FAO O-11-028.** Upon execution of this Stipulation, the Commissioner, for himself and on behalf of the Division, hereby agrees to forthwith sign an Amended Final Agency Order ("Amended FAO") concerning the physician LTC insureds and all matters related thereto. The Amended FAO shall supersede FAO O-11-028.

2. Satisfaction of All Requirements of FAOs O-11-002 and O-11-012:

(a) COPIC has paid, to its knowledge, all outstanding costs of the market conduct examination embodied in the MCE Report, including any contractor fees that were due and owing up to and including the date of this Settlement Agreement. In the event that any of the costs of the market conduct examination, including contractor fees, remain unpaid, payment of these costs shall be made by COPIC within 30 days of the execution of this Settlement Agreement or within 30 days of COPIC becoming aware of such unpaid costs.

(b) The Division and the Commissioner agree and acknowledge that actions COPIC has taken in 2009, 2010, 2011, as well as the action COPIC has agreed to take pursuant to this Agreement, the MOU, and the Stipulation, satisfy all obligations and requirements placed upon COPIC pursuant to FAOs O-11-002 and O-11-012 and that no further adverse actions, penalties or fines will be asserted against COPIC for those matters raised in the Market Conduct Examination and FAOs O-11-002 and O-11-012. Other than as released herein, the Division and the Commissioner retain the authority granted to them by Colorado law. Therefore if violations similar to those noted in FAOs O-11-002 and O-11-012 occurred or should occur in any year other than 2008, and if such violations are not explicitly released herein, the Division and Commissioner retain their jurisdiction to take appropriate action as determined by Colorado law. Notwithstanding the foregoing, COPIC and the Division agree that the Division may conduct other market conduct examinations of COPIC, as permitted by law, but the Division further agrees that such examination shall be conducted for an audit period that will commence no sooner than July 1, 2012.

3. **No Admission of Wrong-Doing, Findings or Conclusions:** COPIC contests that it has violated C.R.S. § 10-3-1104 as asserted in FAOs O-11-002 and O-11-012; contests that its physician insureds cannot constitute a proper group for purposes of long term care insurance, contests numerous findings of fact in the FAOs; contests various other conclusions of law in the FAOs; and contests the Division and Commissioner's authority to regulate matters concerning COPIC's political action committee, all as set forth in greater detail in COPIC's Appeals. COPIC is entering into this Settlement Agreement and other related documents for the purpose of compromising and resolving the parties' respective disputed claims, to provide finality and protection to COPIC's long term care insureds, and to avoid the expense of further

litigation and/or regulatory action addressing these topics. COPIC's execution of this Settlement Agreement is not and shall not be considered an admission by COPIC of any of the allegations, findings and conclusions set forth in the FAOs, other than to the extent explicitly admitted or adopted by COPIC in its July 30, 2010 Response to the Colorado Division of Insurance's Final Limited Scope Market Conduct Examination Report Dated July 2, 2010.

4. **No Preclusive Effect:** The parties explicitly acknowledge that this Agreement shall resolve only the specific disputes related to the FAOs and the Appeals. The parties agree and acknowledge that this Settlement shall not have any preclusive effect in the event of any future dispute between the parties that raise the same or similar legal issues but under a different set of facts than those set forth in the FAOs and Appeals referenced herein. Specifically, COPIC retains the legal right to challenge any findings of fact, conclusions of law, fines, penalties or other adverse action taken by the Division or the Commissioner against COPIC in the future for acts other than those set forth in the FAOs and Appeals referenced herein and the Division and the Commissioner retain the legal right to make such findings or conclusions and to assess such fines, penalties, or other remedies for acts other than those set forth in the FAO's and Appeals referenced herein. By way of example but not limitation, the Division and the Commissioner retain the right to assert or make findings that by some action other than one at issue in the MCE and FAOs O-11-002, O-11-012 COPIC has violated C.R.S. § 10-3-1104, and COPIC is not precluded from making the same legal arguments COPIC has made in the Appeals regarding the proper application and interpretation of such statute. The parties acknowledge and agree that if a market conduct examination or other administrative action taken in the future raises the same issues as those raised in the FAOs, but for a year of COPIC operations other than 2008, such

issues shall be considered to apply to a different set of facts and acts than those set forth in the FAOs and Appeals referenced herein.

5. **Releases:** The Parties agree that this Agreement and the incorporated Stipulation represent a full and final settlement of the issues raised in Denver District Court Case No. 2010CV6135 and Court of Appeals Case No. 10CA1680. This Settlement Agreement is intended to resolve all of the issues raised in the referenced civil claims between the Commissioner, the Division and COPIC, its officers, directors and employees, The parties agree to execute any documents necessary to dismiss Denver District Court Case No. 2010CV6135 and Court of Appeals Case No. 2010CA1680, with prejudice, each party to pay their respective attorney fees and costs.

Additionally, the Division and the Commissioner release COPIC from all claims arising from or related to any alleged violation of Colorado Insurance law for the period of January 1, 1997 through December 31, 2011, which are based on any assertion, argument, finding or conclusion that COPIC was not authorized by Colorado law or by the Division to offer long term care insurance pursuant to a group policy during that period; that COPIC's physician insureds did not constitute a group under Colorado Insurance law; that COPIC's 1997-2011 long term care rates, forms, and other regulatory filings improperly combined professional liability and long term care provisions or considerations, or that COPIC otherwise improperly administered its long term care program, filings, or rates from January 1, 1997 through December 31, 2011. The Division explicitly retains, and COPIC agrees that the Division retains, the ability to examine and regulate COPIC's administration of 1) any past or future claims submitted by its long term care insureds, 2) COPIC's administration of any past or future lapse or

termination of coverage for COPIC's long term care insureds and 3) all future operations and administration of COPIC's Long-Term Care product, as permitted by Colorado law.

6. **Waiver of Additional Rights:** By entering into this Stipulation, COPIC knowingly and voluntarily waives any unexercised rights concerning the MCE related to January 1, 2008 to December 31, 2008, the MCE Report and the FAO's, pursuant to Colorado statutes and law governing the same, including but not limited to, an additional hearing in this matter; the right to present a further defense, additional oral and documentary evidence; to cross-examine witnesses at such hearing; and the right to seek final judicial review or other relief regarding the above. Nothing in this provision shall limit or otherwise affect COPIC's rights pursuant to Colorado statutes and law governing MCEs with respect to any future MCE that the Division conducts. Nothing in this paragraph shall be construed as the Division admitting or acknowledging any available remedy regarding the MCE, the MCE Report and FAO's other than as set forth in §§ 10-1-205(4)(a) and (e), C.R.S.

7. **Enforcement of Agreement and Stipulation:** COPIC understands and acknowledges that the Division may take such lawful steps as may be necessary or appropriate to investigate and determine whether COPIC is in compliance with this Settlement Agreement, the Stipulation, and the Amended FAO approving the Stipulation and this Settlement Agreement and COPIC agrees to cooperate in any such investigation.

In the event the Division takes action relating to alleged violations of the Stipulation, this Settlement Agreement or the Amended FAO, then the Stipulation, this Settlement Agreement and the Amended FAO and all related materials, including but not limited to FAO O-11-002, FAO O-11-012, FAO O-11-028 and FAO O-12-020 and MOU shall be deemed admissible in full in that proceeding for any relevant purpose.

8. **Reporting of Settlement:** COPIC understands that the Stipulation, this Settlement Agreement and the Amended FAO shall be reported to the National Association of Insurance Commissioners pursuant to §§ 10-1-216 and 10-1-217, C.R.S.

9. **Public Nature of Documents:** Upon the Commissioner's entry of the Amended FAO, the Stipulation, this Settlement Agreement and the Amended FAO shall be a public record in the custody of the Division under the Colorado Public Records Act, § 24-72-101, *et seq.*, C.R.S.

10. **Subject to Commissioner Approval:** The Stipulation and this Settlement Agreement are subject to approval by the Commissioner or his designee, and shall become binding upon the parties hereto upon such approval. In the event the Commissioner does not approve the Stipulation and/or this Settlement Agreement, the parties shall retain all claims and defenses available to them had this Settlement Agreement not been entered into by the Parties.

11. **Dismissal of Appeals:** In consideration of the agreements herein, the parties agree that the Appeals shall each be dismissed with prejudice but with the limitations on preclusive effect set forth in Paragraph 4. The parties further agree that upon dismissal of the Appeals, the stipulated stays of the effective dates of Final Agency Order Nos. O-11-002, O-11-012, O-11-028 shall be lifted. The agreed forms for the motions to dismiss each action and lift the respective stays are attached hereto as Exhibits A and B. Upon execution of this Settlement Agreement and the approval of the Commissioner required in Paragraph 10, COPIC shall forthwith file a motion to dismiss, with prejudice, the Appeals in the Denver District Court and the Colorado Court of Appeals.

12. **Further Assurances.** The parties agree to take any further actions and to execute any further documents, stipulations, motions, releases, or other documents necessary to

effectuate the dismissal of the Appeals and the actions agreed to be taken in this Settlement Agreement and the Stipulation.

13. **Voluntarily Entered:** The parties represent and warrant that this Agreement is executed voluntarily and by the parties with the full knowledge of the consequences and implications of the obligations contained herein. The parties also represent and warrant that they have had the opportunity to be represented by counsel of their choice throughout the negotiations which preceded the execution of this Agreement, and in connection with the preparation and execution of this Agreement, and that they have carefully and thoroughly reviewed this Agreement in its entirety.

14. **Savings Clause:** Invalidation of any provision of the Stipulation, this Settlement Agreement or the Amended FAO by a court of competent jurisdiction shall in no way affect the validity or enforceability of any other provisions of the Stipulation, this Settlement Agreement or the Amended FAO, which shall remain in full force and effect.

15. **Merger Clause:** The Stipulation, this Settlement Agreement and the Amended FAO contain the entire agreement between COPIC and the Commissioner and Division, and there are no agreements, understandings, representations or warranties that are not expressly set forth herein, other than those specifically incorporated herein. The parties retain all legal rights to enforce the terms of the Stipulation and this Settlement Agreement as may be applicable in a court of competent jurisdiction.

16. **Authority:** The signatory for COPIC represents that he is duly authorized to execute this Agreement on behalf of COPIC.

17. **Survival:** The terms and conditions contained in this Agreement shall inure to the benefit of, and be binding upon the respective successors, assigns, heirs, survivors, and personal representatives of the parties.

18. **Counterparts:** This Agreement may be executed in counterparts, and, if so executed, will be effective as if simultaneously executed.

The foregoing is duly executed and agreed the day and year indicated above.

COPIC Insurance Company, a Colorado
Corporation

By

Steven A. Rubin

Commissioner, Colorado Division of Insurance

By:

Jim Riesberg
Jim Riesberg

Colorado Division of Insurance

By:

John J. Postolowski
John J. Postolowski
Deputy Commissioner